

October 2019

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### Recommended Citation

Turner, R., & Lichtenberg, R. (2019). Reasonable Accommodations and the Americans with Disabilities Act: Effective Advocacy Approaches. *JADARA*, 34(3). Retrieved from <https://repository.wcsu.edu/jadara/vol34/iss3/7>

## **Reasonable Accommodations and the Americans with Disabilities Act: Effective Advocacy Approaches**

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**Randi Turner & Robert Lichtenberg, J.D.**

### **Abstract**

This paper focuses on the elements of effective ADA advocacy and advocacy strategies in general. "Qualified person with a disability", "effective communication", "auxiliary aids and services", "undue hardship/burden", and other topics are addressed. Readers are provided with recent case law defining "mitigating measures" that serve to disqualify individuals with disabilities, giving examples of legal determinations of what is considered "reasonable", and furnished with creative, effective negotiation strategies. The conference themes are also addressed by providing the professional with innovative issues and identification tools that can lead to effective remedies, as well as dynamic advocacy strategies for diverse situations.

Professionals who serve deaf or hard of hearing persons in need of access to employment and support services are often challenged with determining whether a client is legally entitled to reasonable accommodations. Often disagreements arise between providers and clients in identifying what is reasonable as both parties have differing opinions about what constitutes "effective communication" as a reasonable accommodation for persons with hearing loss. There are potential conflicts of interest that compromise advocacy strategies due to the advocacy roles providers play while seeking to establish a collaborative relationship with a party who may be resistant to absorbing costs for accommodations.

"Be a diplomat, not a warrior" was the admonishment reiterated by presenter Vincent Scalia, Ph.D., during the 2000 PET-D (Post Employment Training Administration of Programs Serving Consumers who are Deaf, Late-Deafened, and Hard of Hearing) training at San Diego State University. This phrase is a reminder of what effective advocacy is all about. Whether one provides vocational rehabilitation services, mental health services, K-12 services, or as an advocate for a service agency, diplomacy is vital. To be an effective advocate not only requires knowledge of the Americans with Disabilities Act (ADA) but also diplomacy, including techniques and strategies to approach people in a non-threatening way to produce the required results.

First, in developing advocacy strategies, one must be mindful of the pressure points that can be exerted from the law. Second, providers may signal a cooperative attitude while attempting to "water down" the cost and thereby the effectiveness of accommodations needed for one's client; what

mindset should one take to such tactics? Third, the ethical and role conflicts that may arise for advocates wearing two or more “hats” requires taking a close examination of one’s advocacy approaches.

This paper will examine legal elements required to establish entitlement to reasonable accommodations and will discuss effective approaches that skirt around potential conflicts of interest.

### Disability Rights Legislation

There are several pieces of disability rights legislation that have landmark status. The most noted is the ADA. Two other areas of specific importance are Section 504 of the Rehabilitation Act as amended, and disability rights protection statutes on the books of many states.

### The ADA

The Americans with Disabilities Act was signed into law in 1990 and consists of 5 titles:

- Title I-Employment
- Title II-State and Local Government
- Title III-Public Accommodations
- Title IV-Telecommunications
- Title V-Miscellaneous

This paper concentrates on the reasonable accommodation mandates in the first three titles and advocacy strategies to achieve access for people with hearing loss.

One item of particular interest in Title V is the protection against retaliation for advocates. One such attempt occurred with a high school in Texas where a debate coach was threatened by an organization that sponsors speech and drama competitions. Students who are deaf were not permitted to use interpreters for a regional oratory competition and they filed an injunction. In the end, the organization agreed that for future competitions interpreters could be used. However, at the same time, one of the sponsoring organizations’ administrators informed the debate coach that the school will not be invited to future competitions if interpreters continue to be an issue. The coach, the students, and the school are all protected against this type of retaliation under Title V and could make a complaint against the sponsors.

### Section 504

Section 504 of the Rehabilitation Act, passed in 1973, was the first disability rights anti-discrimination law. Section 504 applies to agencies receiving federal funds as well as federal agencies such as the Immigration

and Naturalization Services, Internal Revenue Service, the U.S. Postal Service and the Social Security Administration, to name a few.

An important note is that the ADA and 504 are similar in concept but 504 is weaker in language. The ADA provides a much stronger mandate by using terms like “shall” while 504 uses “may”. In order to establish a case it is important to identify the funding relationship of the program allegedly in violation of Section 504 and to the entity receiving federal funds. Several court decisions have carved out specific relationships that must exist in order to have standing to sue under that law. One also has to ensure that the person with a disability meets the criteria for protection under the statute. It does not protect individuals with certain disabilities who may otherwise be protected under the ADA or state statutes.

### State Statutes

It is necessary to research the laws in your state to identify any additional legislation that has passed to assist people with disabilities. States may define terms used in law, such as “disability”, in different ways. Check the laws of your state to see how disability issues are defined along with their relation to the ADA and 504. This will help you determine how to best utilize any information which could help convince providers to accommodate your clients.

Courts analyze cases in a variety of ways to interpret the law. For the most part, judges, rather than juries, are making the decisions. Their experiences, thinking, philosophy all come into play when they make judgments. Judges can consider things several ways, first by deciphering the intent and meaning of the law. If it is obvious the law says “no”, then the judge says “no”. But, if the law says “should”, “could”, or “may”, then there is some level of magisterial discretion that comes into play. The judge must contemplate the intention of the legislators who wrote the law or assess the language of the law to guide them. This holds true when they look at such terms like “qualified interpreter” or “effective communication”. A judge may draw from some similar facet of life, such as a personal experience, and employ that as a guideline to assist in their interpretation of the law. They may then also contemplate the fact that their decision may become the standard. They may question how their decision affects the general public? They may try to put themselves in the role of “John Q. Public” to envision what the impact could be. Decisions are often made in a pragmatic way. This has lead to the tendency in court decisions to identify what is truly a “disability” in relation to the impact on one’s ability to function. If there is a sense that the disability is of a temporary

nature there may be a hesitancy to find for a plaintiff alleging discrimination.

### What is a disability?

Disability, as defined by the ADA, is a physical or mental impairment (or having record of such or regarded as having such) that substantially limits one or more of the following major life activities such as caring for oneself; performing manual tasks; walking; seeing; hearing; speaking; learning; working; sitting; standing; etc. The impairment is also determined by its nature, severity, duration or expected duration, and its permanent or expected-permanent long-term impact. Note: the key term here is “substantially limits”.

The activities such as taking care of oneself, lifting, sitting, standing, speaking, hearing etc., are considered functional activities. A person with a physical impairment that prevents him or her from doing some life activity does not necessarily mean that individual is disabled. The disability itself needs to cause some functional limitation that is significantly different from that of people without disabilities. Some people may have trouble standing for an hour, but does this mean they are disabled? No. The persons tolerance may be a bit less than normal but this alone does not necessarily qualify them as disabled. You then need to determine if the individuals’ disability is temporary or permanent. The ability to provide effective accommodations is based on your understanding of the functional limitations of your client.

In the context of job placement services, a client who needs assistance in finding a job should identify their functional limitations only as such may affect their ability to perform the essential functions of the job. While communication may be a limitation, you may find there are other limitations that need accommodating. Persons with hearing loss may have other functional limitations that come from other hidden disabilities, such as attention deficit disorders, learning barriers, and mental illness.

### Mitigating Measures

In *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), the U.S. Supreme Court made a decision that has a tremendous impact on people with disabilities. The presence of minor modifications that provide assistance to an individual with a disability may no longer qualify an individual as disabled. The *Sutton* case involved two sisters with myopia who were certified airline pilots applying for employment with United Airlines. United Airlines required their pilots have 20/20 vision, uncorrected. The sisters had 20/20 vision corrected (with glasses). When

the court looked at this case they had to consider if these 2 individuals were disabled as defined by the ADA. With glasses, they were no longer “functionally limited”. The court ruled that because the sisters could see with 20/20 vision, their disability had been mitigated by adding glasses. Thus, they no longer had a disability that was substantially limiting and therefore could not make a claim under the ADA. This judgment may have an impact on people who are hard of hearing that find themselves needing accommodations. Some people who use hearing aids function well in some environments and not in others. Some environments create noise and may require the use of an FM system. If it is determined that an individual does not meet the definition of disabled (because with their hearing aids they are no longer so) they may not be able to acquire the accommodations needed for employment or any other situation. You need to consider whether the client is functionally disabled or is functionally employable in a given situation, considering his or her limitations.

In Texas an individual already employed as a police officer was offered a position of employment by the City of Dallas that was withdrawn when he failed a hearing test (without his hearing aids). He had a mild hearing loss even with hearing aids in each ear. When he made his ADA complaint, these questions arose: is he a person with a disability as defined by the ADA and/or was he “perceived as” or “regarded as” a person with a disability? Due to mitigating measures, he did not meet the definition of a qualified individual with a disability because the hearing aids brought him within a normal range of hearing. Although the court found that the police department regarded the plaintiff as having a disability, the court also found that he was not entitled to any accommodation under the ADA on those grounds.

It is important to note that even with mitigating measures, there is still a chance for reasonable accommodations. Each case is considered independently, case by case.

### Who is a Person with a Disability?

Despite the presence of mitigating measures, one must first begin by determining whether there is a legally protected disability. An individual with a disability as defined by Title I is a person with a (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) a record of such an impairment; or, (3) being regarded as having such impairment. 29 C.F.R. §1630.2(g)

The threshold requirement of “substantial limitation” is very important when pressing for reasonable accommodations. In a recent case, a woman claimed she needed an employer accommodation because she

could not sit or stand for more than an hour at a time. She claimed this made her disabled. She wanted the employer to restructure her position so she had both stationary and movement duties. The employer said there were specific duties she was required to perform in her position and they could not restructure her position in the way she wanted. When the court considered the case, the court determined this sitting/standing activity to be no different than the “normal” person and therefore she was not a person with a disability.

If there is a perception of an impairment, the ADA defines this person as one who is “regarded as” having a disability. This means a person has a physical or mental impairment that does not substantially limit a major life activity but is treated as such as a result of the attitudes of others. Suppose you hire someone who is openly gay and because of this lifestyle you assume this person has AIDS. You treat this person as someone who is disabled and act in a discriminating manner. This is clearly a violation of the ADA and the individual can make a complaint against you for this treatment, whether or not the person actually has AIDS. The ADA simply prohibits discriminatory conduct by another who believes that the other person is disabled. Normally, a person would have to first establish the presence of a disability to have a right to a reasonable accommodation, but if discriminated against, the person may be able to show there was a perception of a disability in order to be entitled to remedial action and protections against future discrimination.

### Who is a qualified person with a disability?

Title I also states an individual with a disability is one who ...satisfies the requisite skill, experience, education, and other job related requirements of the employment position that such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. 29 C.F.R.1630.2(m)

When one approaches advocating for a person in an employment setting, it is critical to assess whether the person can perform the essential functions of the job. It is important to assess the barriers facing your client when they need to perform essential functions. Without this assessment, the employer will not understand the limitations. It is also important not create difficulties unknowingly. Be cautious about what is said about your client but at the same time notify employers of their functional limitations.

The definitions of “qualified individual with a disability” and the concept of “substantially limits” are basically the same throughout all titles of the ADA. In the employment field, there are many steps in the hiring process. The Equal Employment Opportunity Commission has a helpful

tool at their web site ([www.eeoc.gov](http://www.eeoc.gov)) that can serve as a guide through the “do’s and don’ts” of employment accommodations.

### Essential Functions and Marginal Functions

This is an employment related provision. Essential functions are those tasks and responsibilities that are critical, necessary, fundamental, internal, crucial, imperative or indispensable to the position. Most employers have job descriptions that list the essential functions of the job. It is possible to contact the potential employer and inquire as to what are the essential functions. Your client then must be assessed to determine if he/she is able to perform the functions of that job. If the client cannot perform some of these duties without accommodations, he/she may not be qualified for the position.

The marginal functions are those tasks and responsibilities that may be viewed as borderline, minimal, incidental, peripheral or accessory. They are less critical but still need to be performed. Possibly a trade-off or job share can be done with these functions. These functions do not usually require a great deal of experience or training to perform. In the event such functions cannot be performed, a request for job restructuring may be a reasonable accommodation.

### What is a Reasonable Accommodation?

A reasonable accommodation can be a change or adjustment provided by technology, job task restructuring, or schedule changes, etc., that enable the otherwise qualified individual with a disability to perform the essential functions of the position. Reasonable accommodations are not there to ensure career success but to provide equal opportunity to hold down a position afforded those without disabilities. There are no guarantees the client will be successful just as there are no guarantees a new hire who is not disabled will be successful. The accommodation simply opens the door to opportunity. The opportunity to participate is what the ADA is all about. Participation in effective medical or legal consultations is just as important as it may be in a job setting. The client needs to understand what the barriers are and what accommodations are effective and reasonable while trying to find a way to deal with providers and employers to create a “level playing field”.

### Auxiliary Aids and Services

The auxiliary aid requirement is a flexible one. A provider of accommodations can choose among a variety of alternatives but the end result must be effective communication. If the “effective communication”



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threshold is not achieved, the entity involved may be in violation of the ADA.

Auxiliary aids and services are those accommodations that may be used to ensure effective communication. The ADA lists a number of alternatives such as qualified interpreters, note takers, written materials, computer aided transcription services, handset amplifiers, closed captioning decoders, TTY's/TTD's, phones compatible with hearing aids. Along with some other options, 28 C.F.R. §35.104, also states, "making aurally delivered materials available to individuals with hearing impairments." This leaves the door open for technology and since the implementation of the ADA one such piece of technology on the forefront is video interpreting. This list is not meant to be exclusive or exhaustive, as technology brings us other alternatives they may be considered as well.

The most expensive or top of the line technology is not required--only that which achieves effective communication. If a person who is hard of hearing requests CART (Communication Access Real-time Transcription) for a doctor's appointment, several things may need to be considered. What type of appointment is it? How extensive or lengthy is the appointment and will writing suffice? What are the communication abilities of the person who is hard of hearing? Can he or she lip-read? Would communicating on a laptop be acceptable in lieu of CART services? What will achieve effective communication? Many such questions need to be answered before a decision can be made in regards to the method of communication used. In the end the physician, business or provider involved makes the final determination of the accommodation provided. This should be done in consultation with the person who has a hearing loss so that an informed decision is made. Suppose a person with a hearing loss goes to a hospital emergency room and he or she requests interpreter services to ensure communication. The hospital decides to attempt writing as their method of communication, which is fine as long as the result is effective. If not, the hospital is obligated to provide whatever accommodation is necessary to achieve effective communication unless an undue burden would result. The U.S. Department of Justice (DOJ), as well as the courts, take into consideration several factors when making the determination of undue burden, which will be discussed in more detail later. The fact remains that the hospital is responsible to ensure that communication is as effective as the communication opportunity afforded other people.

Entities obligated to provide accommodations need to have their fears allayed as to the commitment they may have to make. The accommodation may be a simple one-time change such as a ramp. If the

solution is something like a ramp, it is important to emphasize how the accommodation can benefit others, such as mothers with babies in a stroller or delivery persons. Another accommodation that benefits many are curb cuts. They not only assist people in wheelchairs, but bike riders and skateboarders, too. Emphasize the broad value of accommodations instead of focusing only on one specific person's disability.

### Common Misunderstandings

There seem to be four common misconceptions about reasonable accommodations that continue to surface regarding persons with hearing loss. These are: (1) the definition of qualified interpreter; (2) providing an interpreter vs. effective communication; (3) who makes the final decision regarding what accommodation will be provided, and (4) who pays for the accommodation?

#### **Qualified Interpreter**

The ADA definition of "qualified interpreter" is: an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. 28 C.F.R. §35.104, 28 C.F.R. §36.303(b)(1).

The word "certified" or "licensed" is not included in this definition. Many people think this weakens the definition, but look again at the language used. It is clear that a person who can simply fingerspell does not meet the criteria of "effectively, accurately, and impartially" when interpreting for someone who is profoundly deaf and a native ASL user in a hospital emergency room. A hearing child who is 6 years old with parents who are deaf will not likely have the vocabulary necessary to interpret the medical history of her mother in a doctor's office and very possibly neither will a nurse who has attended a few sign language classes. A recent settlement agreement made between the U.S. Department of Justice and the City of Houston hits on this very topic. Much of the case focused on the aspects of effective communication. A police officer was used to interpret for a person who was deaf. According to the plaintiff the officer did not meet the definition of qualified interpreter as defined by the ADA. The officer had some basic communication skills but was not able to interpret effectively and accurately, according to the plaintiff. There were other issues involved with the case as well, but the end result was a settlement agreement with the City of Houston and a monetary damage award of \$130,000 to the plaintiff.

Even though the definition of qualified interpreter does not contain the word "certified", there are ways to encourage the use of certified

interpreters by emphasizing the importance of credentials. A doctor would not hire a nurse who is not credentialed or a lab technician who does not hold the appropriate licensure. In most states a plumber may not practice his trade unless he is licensed. Since it is the obligation of the covered entity to ensure effective communication, one way to make this determination is to use certified interpreters. In the absence of any other way to evaluate the interpreter's skill the business may rely on the certification of the interpreter. When an interpreter is certified, we understand they have passed a certain level of competency. This is one way to establish the level of skill, thus the "qualification" of the interpreter.

### Interpreter vs. Effective Communication

While the ADA gives a person with a hearing loss the right to effective communication, an interpreter is not always the answer. A place of business is only obligated to provide an accommodation that will make communication effective. If another method achieves effective communication, such as writing, then the business has met their obligation. No one method is recommended by the ADA as it is a process determined on a case by case basis.

Title II states: a public entity shall take appropriate steps to ensure communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

28 C.F.R. §35.160(2)

This is an assurance that ALL people who are deaf or hard of hearing have an equal opportunity to communicate with others. That "appropriate steps" are taken to make communication a part of the program design is not to be considered just an after thought. This not only guarantees communication access for a patient at a county hospital, but also to the other family members with hearing loss. Note that the ADA states: "and members of the public with disabilities". It does not state "only the patient". A spouse with a hearing loss is entitled to effective communication when important information regarding his hearing wife, the patient, is being relayed. Another example might be a visit from a caseworker of a child protective services agency who wants to interview a hearing child. If the parents have a hearing loss and would normally be allowed to participate, the caseworker must accommodate the parents to allow their participation even though the interview is with the child.

Title III states: a public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. 28 C.F.R. §36.303(4)(c)

While this portion of the ADA does not require pre-program design, the wording “where necessary” implies effective service delivery design. The business involved needs to be prepared to provide access. In Title III as well as Title II you see the word “shall”, rather than “may”. This means access must occur (unless it poses an undue burden or direct threat to others). Like Title II, Title III states access is to be provided to “individuals with disabilities” and this means all individuals. If a pediatrician is treating a hearing child and there is information that needs to be given to the disabled parent, then the necessary provisions must be made to accommodate the parent.

Title II requires that public entities give primary consideration as to what accommodation is requested by the individual with a disability.

In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities. 28 C.F.R. §35.160(b)(2)

Title III does not have this mandate but does recommend consultation with the person who is disabled to determine the accommodation needed. Whatever approach is used, effective communication must occur.

#### *Who Makes the Final Decision in Regards to what Accommodation will be Provided?*

The final decision regarding what accommodation is used is made by the business involved and regardless, it must still be the right decision. The business can be held liable if they choose an accommodation that does not result in effective communication.

#### *Who Pays for the Cost of the Accommodation?*

The ADA stipulates that a charge may not be imposed on an individual with a disability or group of individuals with disabilities to cover the cost of the accommodation. If an accommodation is needed, the business involved is responsible for providing such accommodation. If there is a cost involved, the person who is disabled is not to be charged for the cost of the accommodation.

a public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of the measures, such as the provision of auxiliary aids...

28 C.F.R. §36.301(c)

Many accommodations have little or no cost associated. For example, someone with a hearing loss may need a notetaker for a staff meeting. This

service can be provided by another staff person at no cost to the business and may be achieved by handwritten notes or using a laptop. If a computer training class is offered to staff and someone who is hard of hearing wants to attend, CART services may be warranted so the person with a hearing loss has an equal opportunity to participate in the class as others do. This accommodation and any cost incurred would be the responsibility of the workplace if an undue hardship does not result.

### Undue Hardship/Burden

28 C.F.R. §36.104 contains the factors outlined in the ADA that are to be taken into consideration when making the determination of undue hardship or undue burden. These are:

- The nature and cost of the accommodation needed.
- The overall financial resources of the site or sites involved.
- The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity must be considered. Take Burger King for example. There may be several Burger Kings in one city. How are they financially related? What is the financial relationship between the location you are working with and the regional office or national headquarters? What is their relationship with the other Burger Kings in the area? All these factors play a part in discerning undue burden.
- If applicable, other considerations are the overall financial resources of any parent corporation or entity, the overall size of the parent corporation or entity with respect to the number of its employees and the number, type, and location of its facilities.
- If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

The essence is that it is not only the cost of the accommodation that determines undue burden but many other factors play a important part in the decision. The DOJ and the courts look at the big picture and not only the cost of the accommodation.

### The Interactive Process

The ultimate goal is compliance with the ADA. This can be accomplished through an individualized assessment, which is an interactive process. The courts look to evidence of an “interactive process” between the person with a disability and an entity (especially employers) that may have an accommodation obligation. The individualized assessment has

several steps. First, one must identify the nature of the job or situation that may require a reasonable accommodation. Secondly, one must identify the disability and the functional limitations that gave rise to a disability-related barrier identified by the nature of the job or situation. The next step is then to collaborate to remove the disability-related barrier and to conduct an assessment of the feasibility of securing the accommodation and its effectiveness in achieving the accommodation sought.

It is critical for advocates and providers to document their interactive dialogue about the information shared and proposals offered or denied and the reasons behind any resulting decisions. This is critical in cases where one must establish or disprove the presence of a disability, the reasonableness of the request for an accommodation, the effectiveness of the accommodation provided, and/or the presence of any legitimate exception to the obligation to provide accommodations (i.e., undue burden or direct threat to self or others). There are a number of policy issues that underlie the interactive process, which are discussed next.

#### Legal Obligations/Repercussions

Effective risk management and avoidance of liability are motives for the interactive process as there are legal penalties for non-compliance. In the absence of one's ability to prove one's case, fines may be imposed, attorney's fees incurred, and monetary damages may be part of the settlement agreement. These costs can sometimes be in excess of the cost of the accommodation requested.

#### Moral Issue of Equal Treatment

In line with the fundamental concept that all men are created equal, the ADA seeks to address this moral issue by creating a process to ensure fair access to equal opportunity. The interactive process manifests the observance by parties of this moral obligation through documentation of the considerations involved in providing reasonable accommodations.

#### Business Benefit: Qualified Employees

Businesses are interested in hiring qualified employees. If a business hires a person with a disability and makes the accommodation needed then the employee is able to "pay back" the business by contributing to the growth of that company. This is a point that can be emphasized when coming to consensus on an accommodation needed in an employment situation. Effective, full participation has a cost recovery factor as better-trained and motivated employees tend to be more productive. This interactive process allows companies to maintain and

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review communications and monitor results so as to maximize their future opportunities in the provision of accommodations to employees. This opportunity for review of historical experience also applies to businesses serving the public under Title III.

### **Tax Credits and Deductions**

There are tax credits available for businesses under Section 44 of the Internal Revenue Code when employing a person with a disability. The tax credits are equal to 50% of the access expenditures for adaptations, acquisitions, and services, up to \$10,250, with no credit for the first \$250, and comes to a maximum credit of \$5000. This may include removal of a wall, widening a door so it is wheelchair accessible, the addition of a ramp or the provision of auxiliary aids and services such as interpreters or note takers. In addition, under other laws tax deductions are also available to businesses for physical barrier removal and or renovation that result in removal of architectural or transportation barriers to attain compliance accessibility standards, for costs up to \$15,000. Combined, the tax deduction and the tax credit can go a long way.

## **Effective Advocacy Approaches**

### **What is an Advocate?**

Webster's Dictionary defines an advocate as "a person who pleads on behalf of another, ... a person who speaks or writes in support of some cause, argument, or proposal". As an advocate your role is to provide information, to let the business or service provider know you are in a position to inform them of their responsibilities and also to help them. Both want access to opportunity. Advocates should have a mutually satisfactory end result in mind, thus allowing your client the benefits of reasonable accommodations so that they can have the opportunity for participation as well as the support of the provider in the future.

### **How to Advocate**

Providing advocacy services is more than just knowledge of the law. Sometimes people in the act of advocating can be overpowering, intimidating and even insulting. Below are some tactics and strategies that have proven to be effective for the presenters.

### **Understand the Law**

Familiarization with the intricacies of the law inside and out is crucial. Not knowing the law well may do more harm than good if inaccurate information is provided. The place of business may check with

another source to verify the information you have provided. If information is discredited, the efforts and the goal to gain access may be lost.

### Engage in the Interactive Process with the Person with Authority

Engaging in an interactive process with the place of business or service provider is needed to get the appropriate accommodation. This may be a potential employer, a doctor's office, a hospital, or a court. It is important to find the person in authority who can approve the request; the ADA Coordinator, or the person who is responsible for compliance to federal regulations. In most cases the person with the authority to approve an accommodation request will be at the top or near the top of the chain of command. This may be the CEO of a hospital, the office manager of a doctors' office, or the court clerk in a judge's office.

### Listen as a Collaborator and be a Partner in the Solution

Often the business person or the Title III agency has a problem making the accommodation, or while understanding the barrier, they are unable to clearly articulate a solution. Listen and try to experience the problem by viewing it from the position of the business. Step back and look at it as a solution provider for your client. In Washington state, a deaf person enrolled in a truck driving school to learn to drive a semi-truck. The instructor had to give verbal instructions, but the student was not allowed to take his eyes completely off the road while driving. The instructor had a legitimate safety concern. Viewing the situation from both student and instructor, a solution was achieved with a video based TV screen mounted to the dashboard where an interpreter was visible (yet the student could keep their eyes reasonably focused on the road). This allowed the instructor to teach while maintaining safety. As an advocate you also need to be a partner in the solution process.

### Recognize the Power of Word Choice and the Timing in the Interactive Process

Often a person who is deaf will state that they "prefer" or "want" an interpreter when what they should be doing is to state what is "needed". He or she "needs" an interpreter for effective communication, which this is the main reason for the request. It is a need, not only a preference. There are also some persons who insist that they have a right to an interpreter, when actually the ADA states the right is only to "effective communication". If the only way to achieve effective communication is through an interpreter, then the case for that solution should be made. But,



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the individual's right is to be able to access communication as effectively as others. Word choice is instrumental in advocating for a definite result.

Timing is also crucial when we interject solutions to entities facing ADA obligations. Some providers or employers will lash out by stating that the accommodation is too expensive or unreasonable. Let them vent their feelings. In a diplomatic way and at the right time explain the legal standard that must be met to prove undue burden and how the cost of the accommodation itself is not the only factor to take into consideration when determining undue burden. The tendency in court cases is that the overall size and budget of an entity must be taken into account, rather than only the cost of the accommodation itself. Offer to fax information that the business can review to help make a determination. Faxing information has proven to be an effective advocacy strategy and the provider may not feel as intimidated or threatened. They are made to feel that they are in control.

Emphasize the Mutual Benefits to Both Sides

Ensure the employer or provider that there are mutual benefits to both the client and the business. The outcome is to see the client served and to see that they have access to the same opportunities as others served by the business. It can be an employee's situation or a patient's visit to a doctor's office--the focus is access to opportunity for both parties to reap the benefits of what each has to offer the another.

Avoid Position Conflicts

It is important to avoid compromising your client's position with your overall interests as an advocate or service provider. For example, in job placement situations there is a tendency by service providers acting as advocates to negotiate reasonable accommodations not only for the particular client but also for "future" clients as yet unidentified. Often compromises in the interest of preserving goodwill or a relationship with an employer may result in the avoidance of advocating for accommodations one knows will be met with very heavy resistance.

It is also important not to create a dependency on a responsibility that is not yours. Often in chemical dependency, medical treatment settings, or in on-the-job training activities, advocates will attempt to seek funds from sources outside of the obligated entity's resource pool to cover accommodations costs in order to persuade the entity to admit the client into the program. This will create an expectation that in the future you will be in a position to offer them the same break for the next person seeking that same access opportunity. Often times, what works for one cannot

continue to work and will not work for all. Then an advocate has to become adversarial, and integrity or position has weakened.

### Chant the Equal Access Mantra

The equal access mantra can be utilized in the same way as a meditation mantra, in that one can use the words to focus on the essentials. Just as meditation mantras help practitioners achieve singleness of purpose through focused application of sound and breath, so can advocates assist providers in tuning into what is the core aspect for equality of opportunity. The credit for this mantra should go to a gentleman by the name of John Evans, who is responsible for overseeing the ADA compliance activities of over 130 state operated entities in Washington state. The mantra is this: "You go, I go".

It simply means what it says: if an employee or customer without a disability can engage in an effective, interactive relationship with the obligated entity, the your client with a disability should be allowed to do the same. For example, if the company sponsors a holiday party and invites the employees to attend, the person with a disability is entitled to a readily achievable and effective accommodation necessary to participate. If necessary, a sign language interpreter or real time captioner may be necessary for that employee, even though the Christmas party is not an essential function of the job. It is a "term or benefit of employment" that obligates the provision of reasonable accommodations. So if one person can go, so should the next... "you go, I go". If that can be applied to the office holiday party, one can reasonably surmise it applies to the obvious situations contemplated by the ADA, Section 504, and many state statutes.

### Activate the Interactive Process

The interactive process and its importance cannot be overemphasized. The interactive process begins with a request for an accommodation. It is important to protect the client with documentation of that process. This is vital in the event the person with a disability or advocate wants to make a complaint against the business or provider involved. When all advocacy efforts have failed and the accommodation is not accomplished it becomes the responsibility of the client to decide the next step. By having documentation in place, your client's legal interests are protected beyond the situation at hand.

### In Summary

As an advocate and service provider to persons with a hearing disability be mindful of the need to design your strategy and resulting

accommodation to the underlying legal principles and unique needs of your client. A constant question throughout the process: does the accommodation ensure that the client has equal opportunity to benefit from the provision of services? It is necessary to build a bridge of opportunity. Negotiation is part of walking across that bridge to make things happen. It is a team effort with your client and the business, moving together in the process.

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The authors are grateful to John Evans, A.D.A. / Reasonable Accommodations Manager for the state of Washington, Department of Personnel; David Myers, Executive Director, Texas Commission for the Deaf and Hard of Hearing; and Billy Collins, Director of Programs, Texas Commission for the Deaf and Hard of Hearing for editorial assistance in preparation of this paper.